

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

TOIVANIA E. GILL,

Plaintiff,

v.

TBG FOOD ACQUISITION CORP.,

Defendant.

Civil Action No. 7:19-cv-00479

**ORDER**

By: Hon. Thomas T. Cullen  
United States District Judge

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The court referred Defendant TBG Food Acquisition Corp.’s (“TBG”) motion for summary judgment (ECF No. 65) to Magistrate Judge Robert S. Ballou for report and recommendation (“R&R”), pursuant to 28 U.S.C. § 636(b)(1)(B). Judge Ballou entered his R&R on February 28, 2022. (ECF No. 77).

The court has reviewed the R&R, the Plaintiff Toivania E. Gill’s objections<sup>1</sup> to the R&R (ECF No. 79), and TBG’s response to Gill’s objections (ECF No. 81). The issues are

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<sup>1</sup> Three points deserve attention. First, TBG argues that Gill’s objections “fail[] to offer any specific or particularized objections” to the R&R as is required under 28 U.S.C. § 636(b)(1)(B). But the court finds that, particularly because of the leniency afforded *pro se* parties, each of the subheadings in her filing constitute a specific objection to the R&R. (See ECF No. 79.) Second, Judge Ballou’s R&R noted that Gill had not submitted a verified complaint or counter-affidavit and that the court could not consider the factual allegations in Gill’s complaint as evidence at summary judgment. (ECF No. 77, at 2.) On March 11—ten days after the R&R was entered—Gill filed an affidavit. (See ECF No. 78.) Gill’s affidavit is untimely because was filed after the discovery cut-off date, the dispositive motion deadline, the court’s hearing on TBG’s motion for summary judgment, and the filing of the R&R. The court will not consider the statements in the affidavit as evidence and, in any event, no facts alleged therein would materially alter the outcome. Finally, many of Gill’s objections pertain to her motion to compel (ECF No. 71). This non-dispositive motion was properly referred to Judge Ballou and he made his final ruling denying the motion at the end of his R&R. (See ECF No. 77, at 11–12.) Even if the court were to construe Gill’s objections to Judge Ballou’s ruling as a motion for reconsideration, the court would find that the decision is not “clearly erroneous” and deny such a motion. See 28 U.S.C. § 636(b)(1)(A).

adequately addressed in the R&R and the parties' briefs. Oral argument would not materially aid the decisional process. Accordingly, the court hereby **ORDERS** that:

- (1) Gill's objections to the R&R (ECF No. 79) are **OVERRULED**;
- (2) The R&R (ECF No. 77) is **ADOPTED**; and
- (3) TBG's motion for summary judgment (ECF No. 65) is **GRANTED**.

**ENTERED** this 25th day of March, 2022.

/s/ Thomas T. Cullen  
HON. THOMAS T. CULLEN  
UNITED STATES DISTRICT JUDGE